IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 259 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SUESHBHAI JASHMATBHAI VAGHELA

Appearance:

1. Criminal Revision Application No. 259 of 2002

Mr S J Dave, A. PUBLIC PROSECUTOR for Petitioner No. 1

MR UTPAL M PANCHAL for Respondent No. 1-2

MR AP RAVAL for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 06/02/2003

ORAL JUDGEMENT

This is a revision application filed by the State

of Gujarat under section 397 of the Code of Criminal Procedure, 1973, challenging an order of the trial court dated 10.4.2002 below application Exh.64 in Sessions case No.124/99.

2. It seems that the present respondents have been facing trial before the learned Addl.Sessions Judge at Surat in Sessions case No.124/99 for offence under sections 120(b), 363, 365 and 302 of Indian Penal Code. During the course of the trial, the applicant-State submitted an application before the said Court at Exh. 62 stating that a lie detection test has been taken in respect of the respondents and that the opinion of the said examination may be admitted in evidence. After hearing the parties, the trial court found that the respondents were in police custody and the result of the said test was not admissible in evidence. Without challenging the said order, the petitioner State submitted another application Exh.64 with a request that Mr V S Patel, the Scientific Officer who had undertaken the aforesaid lie detector test, may be permitted to be examined as witness and he may be summoned for appearance in the case on a given date.

3. After hearing the learned Advocates for the parties on the said application Exh.64 dated 3.4.2002, the trial court recorded a decision that in view of the order passed below Exh.62 (referred to hereinabove), there was no reason for allowing the application and for summoning the aforesaid witness. Accordingly the said application Exh.64 was dismissed on 10.4.2002.

4. Feeling aggrieved by the said order passed below Exh.64 dated 10.4.2002, the petitioner has preferred this revision before this court. It has been mainly contended here that when FSL report has been obtained and when it has been produced on record, it becomes the duty of the State to prove the same. That in order to prove the same, the witness was required to be summoned and, therefore, it was a matter of necessity to call the witness and to examine him in order to prove the said documents. Ordinarily the plea would have been accepted and a complainant or even an accused or any party may be permitted to examine any witness at any stage during the course of the trial. Therefore, ordinarily, the trial court would have accepted the prayer of the State and would have permitted the State to examine the witness in question and would have summoned the said witness. However, the position is little different. The document which is sought to be produced and admitted in evidence with the aid of the aforesaid witness is found to be

inadmissible in evidence by the order of the court below. The said order has already been referred above as one below application Exh.62. Therefore, when the said document has been treated, rightly or wrongly, to be inadmissible in evidence, on the grounds stated in order below Exh.62, then in that event, it would be an exercise in futility to examine the witness in order to prove the said document which is also found to be inadmissible in evidence. There was no reason for the trial court to permit examination of the said witness for proving the document which is found to be inadmissible in evidence. Therefore, when the trial court has already recorded finding that a particular evidence is not admissible in evidence, the trial court was justified in not permitting examination of the witness to prove the said document which is found to be inadmissible in evidence. It is required to be seen that the State has not challenged the order below application Exh.62 before the trial court holding that the said document is inadmissible in evidence. So long as the findings remain on record, it was not possible for the trial court to permit the State to examine the witness in order to prove the document which is found to be inadmissible. In that view of the matter, the order in question cannot be treated to be illegal for any purpose and when the order is not found to be illegal, it is not open to this court to interfere with the said decision while exercising the revisional jurisdiction.

5. For the foregoing reasons, this revision application is dismissed. Rule discharged. Interim relief stands vacated.

Mr Utpal Panchal, learned Advocate for the respondent requests for Direct Service for the respondents. Direct Service for the respondents is permitted.

6.2.2003 [D P Buch, J.]
msp